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ATTORNEY DOCKET NUMBER: 2002834-0222 (Bacterial Delivery DIV1)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Caplan et al.
Serial No.: 10/728,051
Filing Date: December 4, 2003
Title: MICROBIAL DELIVERY SYSTEM

Examiner: Huynh
Art Unit: 1644

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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<u>March 24, 2005</u> Date	<u>Kathy Hart Gagnon</u> Signature
<u>KATHY HART GAGNON</u> Typed or Printed Name of person signing certificate	

Sir:

TRANSMITTAL

Enclosed please find the following documents:

1. Response to Restriction/Election Requirement (2 pages);
2. Return Postcard.

Please charge any fees associated with this filing, or apply any credits, to our Deposit Account No. 03-1721.

Respectfully Submitted,
CHOATE, HALL & STEWART, LLP

Date: March 24, 2005

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RESPONSE TO RESTRICTION/ELECTION REQUIREMENT

This paper is filed in response to the Restriction/Election Requirement mailed March 11, 2005. This paper is timely filed on March 24, 2005 since the due date for responding to the Restriction Requirement is April 11, 2005.


Responsive to the Restriction Requirement, Applicant respectfully notes that parent claims 1-33 were cancelled in a Preliminary Amendment that was included with the original divisional filing on December 4, 2003. Claims 34-42 were added in the same Amendment. It would appear that the Examiner overlooked this Preliminary Amendment since the Restriction Requirement is drawn to claims 1-33. However, Applicant also notes that pending claims 34-42 fall within the scope of Group 12 of the Restriction Requirement (i.e., compositions that comprise microorganisms that produce peanut protein or polypeptide). In order to expedite the prosecution of this case, Applicant hereby elects Group 12 and submits that pending claims 34-42 should therefore be examined together in this case.

Despite making this election without traverse Applicant respectfully submits that the Examiner's Restriction Requirement was unjustified. Indeed, related generic claims have already been extensively searched and examined by the same Examiner in parent application U.S. Serial No. 09/731,375. Applicant has provided the Examiner with a number of prior art

references in the parent application (and again in this divisional filing). Thus, the searching burden on the Examiner was slight, not undue. The fees charged for filing and prosecuting divisional patent applications and then maintaining the resulting patents, place a significant burden on Applicant. It is therefore imperative that any restriction or election requirement be made according to the rules and be clearly supported by the facts.

Please charge any additional fees that may be required, or credit any overpayment, to our Deposit Account No. 03-1721.

Respectfully submitted,



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